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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2005 64234

GAIL BARRIE NILES
783 Azure Hills Drive
Simi Valley, California 93065

A C C U S A T I O N

Physical Therapist License No. PT 5239,
Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California (Board), Department of Consumer Affairs.

2. On or about March 3, 1970, the Board issued Physical Therapist License Number PT 5239 to Gail Barrie Niles (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2007, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2609 of the Code provides that:

The Board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

5. Section 2660 of the Code provides that:

The Board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

“... .

"(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapy assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction. . . .”

6. Section 2661 of the Code provides that:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a conviction within the meaning of this article. The Board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgement of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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1 7. California Code of Regulations, Title 16, section 1399.20, provides that:
2 “For the purposes of denial, suspension or revocation of a license, pursuant to
3 Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be
4 substantially related to the qualifications, functions or duties of a person holding a license under
5 the Physical Therapy Practice Act if to a substantial degree it evidences present or potential
6 unfitness of a person to perform the functions authorized by the license or approval in a manner
7 consistent with the public health, safety or welfare. Such crimes or acts shall include but not be
8 limited to the following:

9 “(a) Violating or attempting to violate, directly or indirectly, or assisting in or
10 abetting the violation of, or conspiring to violate any provision or term of the Physical
11 Therapy Practice Act. . . .”

12 8. Section 2661.5, subdivision (a) of the Code provides that:

13 “In any order issued in resolution of a disciplinary proceeding before the
14 Board, the Board may request the administrative law judge to direct any licensee
15 found guilty of unprofessional conduct to pay to the Board a sum not to exceed
16 the actual and reasonable costs of the investigation and prosecution of the case.”

17 CAUSE FOR DISCIPLINE

18 (Conviction of a Crime)

19 9. Respondent is subject to disciplinary action under sections 2660,
20 subdivision (d), and 2661 of the Code, and California Code of Regulations, Title 16, section
21 1399.20, subdivision (a), in that she was convicted of a crime substantially related to the
22 qualifications, functions, or duties of a physical therapist. The circumstances are as follows:

23 A. On or about March 9, 2005, in a criminal proceeding entitled
24 *People v. Gail Barrie Niles*, in Superior Court, Ventura County, Case No. 2004048936,
25 respondent was convicted by a plea of nolo contendere to the crime of driving under the
26 influence of alcohol, a violation of Vehicle Code section 23152, subdivision (a), a
27 misdemeanor.

28 B. On or about March 9, 2005, respondent was placed on probation

1 for three years. She was ordered to serve 5 days in county jail, pay fines of \$2,625.00,
2 participate in a 90 day first-offender alcohol program, and her driving privilege was
3 restricted for 90 days.

4 C. The facts and circumstances surrounding this offense are as
5 follows:

6 On or about December 3, 2004, California Highway Patrol officers
7 arrived at the scene of a traffic accident where respondent had driven her vehicle onto the
8 right shoulder of the road and had collided with another vehicle. The officers found
9 respondent seated in her vehicle with the engine running and the air bags deployed.
10 Respondent stumbled after she stepped out of her car and had difficulty maintaining her
11 balance. When questioned by the officer, she denied any alcohol consumption. The
12 officer detected an odor of alcohol on her breath and person, and observed that her speech
13 was slurred, her eyes were bloodshot and watery, and she stumbled multiple times. The
14 results of her breath tests indicated her blood alcohol level was .12%/ .11%.

15 Respondent was arrested and charged with driving under the influence of
16 alcohol, a violation of Vehicle Code section 23152, subdivision (a), and driving with
17 .08% or higher blood alcohol, a violation of Vehicle Code section 23152, subdivision (b).

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1 PRAYER

2 **WHEREFORE**, Complainant requests that a hearing be held on the matters
3 herein alleged, and that following the hearing, the Physical Therapy Board of California issue a
4 decision:

5 1. Revoking or suspending Physical Therapist License Number PT 5239,
6 issued to respondent Gail Barrie Niles;

7 2. Ordering respondent to pay the Physical Therapy Board of California the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 2661.5;

10 3. Taking such other and further action as deemed necessary and proper.

11 DATED: October 26, 2005

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14 Original Signed By:
15 STEVEN K. HARTZELL
16 Executive Officer
Physical Therapy Board of California
State of California
Complainant

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19 Niles Accusation.wpd
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